

### **REMARKS**

Claims 1-37 are pending in this application, with claims 1, 19, and 37 being independent. Claims 1, 12, 13, 19, and 37 have been amended. Support for these amendments can be found, for example, at page 8, line 31-page 9, line 29. No new matter has been added.

### **Claim Objections**

Claims 13 and 31 were objected for reciting "a content source." Claims 13 and 31 have been amended per the Examiner's suggestion and now recite "the content source." Accordingly, withdrawal of the objection of claims 13 and 31 is respectfully requested.

### **Claim Rejection**

The Office action rejected claim 12 under 35 U.S.C. 112 as lacking antecedent basis for the term "the first client." Claim 12 depends from claim 11, and now recites "the first content source", a term introduced in claim 11. Accordingly, withdrawal of the rejection of claim 12 is respectfully requested.

### **Choquier et al. Rejection**

Claims 1-7, 11, 13-15, 17-25, 39, 31-33, and 35-37 have been rejected under 35 U.S.C. § 102 as allegedly being unpatentable over U.S. Patent No. 5,774,668 to Choquier et al. In response, independent claims 1, 19, and 37 have been amended to clarify the distinctions between the cited references and the claims.

With respect to amended independent claim 1, applicant respectfully requests reconsideration and withdrawal of the anticipation rejection because Allen does not describe or suggest "determining, based on requesting the content, a performance metric describing an ability for the content source to support the client as measured by the client for at least two of the content sources."

Rather, Choquier is directed to a load balancing gateway that directs a client to the server. See Choquier at Abstract, Fig. 1. In particular, Choquier describes how the gateway is a server

on the network that monitors the state of the different "replicated application servers" supporting the requesting terminals 102. Id. As such, Choquier is seen to simply to use a first server to manage a service group of the replicated application servers. See Choquier at Col. 23, ll. 40-60. Although Choquier does monitor the state of the server, for example, measuring the CPU LOAD on a scale of 1-100, CPU LOAD does not describe an ability for the content source to support the client as measured by the client. See Choquier at Col. 11, ll. 1-21. Nowhere does Choquier describe or suggest "determining, based on requesting the content, a performance metric describing an ability for the content source to support the client as measured by the client for at least two of the content sources" as recited by amended claim 1.

Accordingly, applicants respectfully request reconsideration and withdrawal of the rejection of independent claim 1 and its dependent claims 2-18. Independent claims 19 and 37 recite limitations similar to those discussed above with respect to independent claim 1. As such, the rejection of these claims, as well as their dependent claims, should be withdrawn for the reasons discussed above. Because each claim is deemed to define additional aspects of the invention, however, the individual consideration of each claim on its own merits is respectfully requested.

### **Claim Rejections Under 35 U.S.C. § 103**

Claims 8-10, 16, 26-28, and 34, which depend from independents claim 1 and 19, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Choquier in view of She (U.S. Patent No. 7,133,922). Applicant respectfully requests reconsideration and withdrawal of these rejections at least because She, alone or in combination with Choquier, remedies the failure of Choquier to describe or suggest the features of the independent claims.

### **Conclusion**


Applicants submit that all pending claims are in condition for allowance, and requests that the Examiner issue a notice of allowance. It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific rejection, issue or comment does

not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this reply should be construed as intent to concede any issue with regard to any claim, except as specifically stated in this reply, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

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